

Possible Committee Recommendation Topics

1. Mediation

Mediation in Civil District Court Cases

In 2013, the General Assembly raised the jurisdiction limit for civil District Court cases from \$10,000 to \$25,000. Those cases making a claim for \$10,000 to \$25,000 would have been subject to the mandatory pretrial mediated settlement conference requirement in Superior Court. District Court does not currently have the same mandatory mediated settlement conference requirement.

Possible Recommendation

The Committee may wish to recommend that district court civil cases making a claim of \$10,000 or more be required to participate in a pretrial mediated settlement conference.

Criminal Mediation Fee

Community mediation centers are reporting that they are having difficulty collecting the \$60 dispute resolution fee authorized in G.S. 7A-38.7 due to the court's inability to enforce the imposition of the fee.

Possible Recommendation

The Committee may wish to recommend modifying G.S. 7A-38.7 to specifically authorize the court to enforce the collection of the fee. Possible enforcement options may include refusal to dismiss prior to collection of the fee or use of contempt power.

2. Magistrates

Appointment/Supervision

- ❖ Nominated by the Clerk of Superior Court
- ❖ Appointed by the Senior Resident Superior Court Judge
- ❖ Supervised by the Chief District Court Judge (or designee)
- ❖ Initial term of appointment is two years and subsequent terms are four years

Possible Recommendations

The Committee may wish to recommend changing the entity or entities that nominate, appoint, and/or supervise magistrates so that fewer entities are involved.

The Committee may wish to recommend changing the term of appointment.

***Note:** Changes to these will most likely require amendments to the NC Constitution

Authority/Duties

By Virtue of the Office:

- ❖ Accept guilty pleas and enter judgment in Class 3 misdemeanors
- ❖ Accept admissions of responsibility and enter judgment in infractions having a maximum penalty of \$50
- ❖ Accept pleas and enter judgment in waiver list offenses
- ❖ Issue arrest warrants
- ❖ Issue search warrants
- ❖ Set bail in non-capital cases
- ❖ Conduct initial appearances
- ❖ Punish for direct criminal contempt subject to the limitations contained in Chapter 5A
- ❖ Issue administrative search and inspection warrants
- ❖ Issue orders allowing immediate seizure of animals in certain animal cruelty cases
- ❖ Conduct towing hearings
- ❖ Perform marriages
- ❖ Administer oaths
- ❖ Issue subpoenas
- ❖ Appoint an umpire to determine decrease in value in certain cases involving damages to motor vehicles
- ❖ Accept petitions for involuntary civil commitment and to issue a custody order directing a law enforcement officer to transport the individual for a mental evaluation
- ❖ Take acknowledgement of a written contract or separation agreement between husband and wife
- ❖ Accept complaints, issue summons, and hear and decide cases for expedited eviction pursuant to G.S. 42A (Vacation Rental Act)

Granted by the Chief District Court Judge:

- ❖ Accept written appearances for worthless check cases (\$2,000 or less)
- ❖ Hear and enter judgment in worthless check cases (\$2,000 or less)
- ❖ Appoint counsel in certain cases involving an indigent party (limited to attorney magistrates)
- ❖ Serve multi-county municipality (requires consent of judges/clerks in one instance, specifically excludes that requirement in another instance)

- ❖ Serve as child support hearing officer
- ❖ Award temporary child custody in domestic violence cases
- ❖ Issue temporary ex parte domestic violence orders under Chapter 50B
- ❖ Issue temporary civil no-contact orders under Chapter 50C (stalking) and Chapter 95, Article 93 (Workplace Violence Prevention Act)
- ❖ Draw, verify, and issue abuse/neglect/dependency petitions
- ❖ Draw, verify, and accept juvenile delinquency/undisciplined filings
- ❖ Conduct small claims court, hearing actions seeking eviction, money damages up to \$10,000
- ❖ Enforce motor vehicle mechanic and storage liens
- ❖ Take depositions and examinations before trial

Possible Recommendation

The Committee may wish to consider changing some of the duties that currently require authorization by the Chief District Court Judge to duties granted to all magistrates.

3. AOC Management of IT Equipment

Upon inquiry by staff, AOC has reported that there is no written IT Resource Management Policy, but provided the following statements:

Distribution of IT Hardware/IT Hardware Requirements:

The distribution of IT hardware (desktops, printers) is based upon equipment lifecycle replacement timeframes and equipment break/fix analysis. While NCAOC strives to replace all equipment within lifecycles that are within equipment warranty and maintenance support timeframes that may not always be the case. During fiscal years where equipment budgets are not fully funded, NCAOC prioritizes equipment replacement based upon break/fix analysis and lifecycle replacement (oldest being higher priority).

Per-user hardware needs (desktop, phone, printer) are typically established (budgeted) when a position is created. For hardware requirements beyond the per-user need, we consult with clerks of court, district attorneys and judges as to their office business requirements.

Surplus Equipment:

NCAOC is responsible for disposing of surplus NCAOC-owned equipment. Equipment destined for surplus in the counties is returned to the Judicial Center for appropriate disposal at State Surplus.

Possible Recommendation

The Committee may wish to recommend that the General Assembly require the Administrative Office of the Courts to develop a written, comprehensive policy for IT Resource Management, including specific guidelines for the distribution and maintenance of IT Hardware.

4. Highway Patrol Salaries

State Highway Patrol (SHP) Troopers are paid on a statutory pay plan as defined in G.S. 20-187.3. Under the statutory plan, members of the SHP are still subject to salary classes, ranges, and longevity pay like other State employees but they receive an annual increase of five percent (5%) on July 1 of each year until they reach the top of the pay range. Five percent is the amount “corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Human Resources Commission, not to exceed the maximum of each applicable salary range.” There are over 550 members of the SHP who are not at the top of their pay grade and, therefore, eligible for a step increase.

Since FY 2009-10, the General Assembly has frozen all statutory pay plans. Section 35.7(1) requires that the FY 2013-14 salaries of all permanent full-time State employees “whose salaries are set in accordance with the State Personnel Act” remain unchanged from FY 2012-14. Section 35.8(d) of S.L. 2013-360, Appropriations Act of 2013, which relates to Salary Adjustments for Special Circumstances, further states “The salary increase provisions of G.S. 20-187.3 are suspended for the 2013-2015 fiscal biennium.”

While members of the State Highway Patrol did not receive a step increase in FY 2013-14, the 553 troopers who were eligible for a step increase received a 4% increase from the Salary Adjustment Fund.

Possible Recommendations

There are several options for the General Assembly with regards to the State Highway Patrol.

1. Remove the freeze as defined in Section 35.8(d) of S.L. 2013.360, Appropriations Act of 2013.
2. Eliminate the requirement for an annual step increase and determine the appropriate increase for SHP Troopers annually.
3. Amend G.S. 20-187.3 to provide for a different annual increase or different pay plan. For example, the plan could provide different increases based on performance, years of service, geographic location, etc.

5. Clerk Salaries

Deputy and Assistant Clerks are paid on a statutory pay plan as defined in G.S. 7A-102. The Administrative Office of the Court (AOC) is responsible for developing these pay plans within the parameters outlined in statute. Statute sets minimum and maximum annual pay and specifies that the Deputy and Assistant Clerk shall be eligible for annual increases so long as the employee has provided satisfactory job performance. In addition, per G.S. 7A-300.1, AOC can enter into contracts with cities and counties with populations greater than 300,000 to provide local salary supplements for Deputy and Assistant Clerks.

Since FY 2009-10, the General Assembly has frozen all statutory pay plans. Section 35.3(b)(3) of S.L. 2013-360, Appropriations Act of 2013, which sets the pay for the Judicial Branch, states that “the annual salaries of assistant and deputy clerks of court set under G.S. 7A-102(c1) shall remain unchanged.” Section 35.8(c) of S.L. 2013-360, which relates to Salary Adjustments for Special Circumstances, further states “ The automatic salary step increases for assistant and deputy clerks of superior court and magistrates are suspended for the 2013-2015 fiscal biennium.” As stated here, the freeze applies to both years of the FY 2013-15 biennium.

Possible Recommendations

There are several ways that the General Assembly can provide AOC with additional salary flexibility for Deputy and Assistant Clerks, including:

1. Remove the freeze as defined in Section 35.3(b)(3) and Section 35.8(c) of S.L. 2013.360, Appropriations Act of 2013.
2. Eliminate the requirement for a step plan, letting AOC determine the model for Deputy and Assistant Clerk pay.
3. Expand the ability of local governments to provide salary supplements to Deputy and Assistant Clerks by either:
 - a. Removing the 300,000 population floor, or
 - b. Lowering the floor to encompass more districts.

6. Crime Lab Analyst Testimony Issues

The US Supreme Court found in *Melendez-Diaz* that the confrontation clause of the Constitution requires lab analysts to be available to testify in criminal prosecutions. This has resulted in State Crime Lab analysts spending a great deal of time in court and traveling across the state to be present in court, which has resulted in longer wait times for analyses to be done and additional expenses for the State.

Remote Testimony by Analysts

The question has been raised as to whether lab analysts could testify via video conferencing or some other form of remote testimony. Whether or not a defendant could be required to

accept this form of testimony is a confrontation clause question that has not been clearly answered. However, *Melendez-Diaz* specifically recognized the validity of "notice and demand" statutes and several states have enacted these statutes in relation to the use of remote testimony by analysts.

Possible Recommendation

The Committee may wish to recommend the creation of a "notice and demand" statute for remote testimony by lab analysts, in which if the State provides notice to the defendant that they plan to have the analyst testify via video conferencing and the defendant does not make a timely objection, the analyst does not have to be physically present in the courtroom and may testify remotely.

Expert Witness Fees

In 2013, the General Assembly enacted an additional expert witness fee of \$600 payable to the State Crime Lab or other governmental lab if a lab analyst testifies in a criminal case. The court may waive or reduce this fee. Below is information provided from AOC on the amount collected as a result of this fee through January 31, 2014. This is provided for the information of the Committee, with no recommendation suggested at this time.

EXPERT WITNESS FEES COLLECTED AUGUST 1, 2013 THROUGH JANUARY 31, 2014

[G.S. 7A-304(a)(11); 7A-304(a)(12)]

COUNTY	CODE	TYPE OF PAYEE	AMOUNT
STATE CRIME LAB			
BUNCOMBE	24321	EXPERT WITNESS FEES-ST CRIME LAB	1,620.00
CALDWELL	24321	EXPERT WITNESS FEES-ST CRIME LAB	9.00
CUMBERLAND	24321	EXPERT WITNESS FEES-ST CRIME LAB	270.01
DAVIDSON	24321	EXPERT WITNESS FEES-ST CRIME LAB	540.01
EDGECOMBE	24321	EXPERT WITNESS FEES-ST CRIME LAB	180.10
HAYWOOD	24321	EXPERT WITNESS FEES-ST CRIME LAB	254.92
LEE	24321	EXPERT WITNESS FEES-ST CRIME LAB	45.87
LINCOLN	24321	EXPERT WITNESS FEES-ST CRIME LAB	675.00
ORANGE	24321	EXPERT WITNESS FEES-ST CRIME LAB	86.64
PITT	24321	EXPERT WITNESS FEES-ST CRIME LAB	540.00
STOKES	24321	EXPERT WITNESS FEES-ST CRIME LAB	66.61
WAKE	24321	EXPERT WITNESS FEES-ST CRIME LAB	732.63
WILSON	24321	EXPERT WITNESS FEES-ST CRIME LAB	126.27
		TOTAL	5,147.06
COUNTY LAB			

LINCOLN	22916	COUNTY LAB EXPERT WITNESS FEES	607.04
ROWAN	22916	COUNTY LAB EXPERT WITNESS FEES	398.49
WAKE	22916	COUNTY LAB EXPERT WITNESS FEES	1,215.67
		TOTAL	2,221.20
MUNICIPAL LAB			
PITT	23916	MUN LAB EXPERT WITNESS FEES	100.00
WAKE	23916	MUN LAB EXPERT WITNESS FEES	1,250.00
		TOTAL	1,350.00
		GRAND TOTAL	8,718.26